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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LEDENIA LEVI,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
HEALTH & HUMAN SERVICES,

Defendant.

CASE NO.

COMPLAINT FOR DAMAGES AND OTHER
RELIEF BASED UPON:

1. DISABILITY DISCRIMINATION,
FAILURE TO ACCOMMODATE AND
RETAILIATION IN VIOLATION OF THE
AMERICANS WITH DISABILITIES ACT

JURY DEMAND

Plaintiff LEDENIA LEVI ("Plaintiff" or "Levi") alleges as follows:

1. This action is brought pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* (hereinafter "ADA"). Jurisdiction is predicated under this code section as well as 28 U.S.C. § 1331 as this action involves a federal question.

2. At all relevant times, Defendant STATE OF NEVADA, DEPARTMENT OF HEALTH & HUMAN SERVICES (hereinafter the "State of Nevada" or "Defendant") employed

1 twenty (20) or more employees for each working day during each of 20 or more calendar
2 workweeks in the current or preceding calendar year, and they are therefore subject to the
3 provisions of the ADA.

4 3. The events or omissions giving rise to Plaintiff's claim occurred in this judicial
5 district, thus venue is proper here pursuant to 28 *USC §1391(b)(2)*, and the ends of justice so
6 require.

7
8 **PARTIES**

9 4. Plaintiff, Levi, is a citizen of the United States and a resident of the State of
10 Nevada, County of Clark and City of Las Vegas.

11 5. Plaintiff is informed and believes and thereon alleges that at all relevant times
12 giving rise to the claims asserted, Plaintiff was employed in Las Vegas, Nevada by the State of
13 Nevada. Defendant is an employer within the meaning of 42 *USC §12111(5)(A)*.

14 **EXHAUSTION OF REMEDIES**

15 6. Plaintiff timely filed a "Charge of Discrimination" with the Equal Employment
16 Opportunity Commission ("EEOC") and was issued a Notice of Right to Sue by the EEOC on
17 January 5, 2016, a copy of which is attached to Complaint as Exhibit "A".

18 **STATEMENT OF FACTS**

19 7. On July 10, 2006, Plaintiff was hired by Defendant as a Mental Health Technician
20 I. On November 9, 2007, Plaintiff was promoted by Defendant to a Mental Health Technician II
21 and on January 8, 2013 Levi was promoted by Defendant to a Mental Health Technician III.

22 8. On May 2, 2013 while performing a physical restraint in a training class Plaintiff
23 twisted her right knee and suffered a closed dislocation of the right patella (a medial meniscus tear
24 of her right knee).

25 9. On or about May 2, 2013 Levi was approved intermittent Family Medical Leave
26 (FML) because of the injury.

27 10. Plaintiff's treating physician released her to light duty with limited walking and no
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1 squatting, kneeling, stooping, climbing, lifting or confrontations and the Division of Child and
2 Family Services returned Levi back to light duty work in the medical records unit from May 4,
3 2013 through August 1, 2013.

4 11. On August 8, 2013 Levi had surgery on her right knee which included a right knee
5 scope and medial synovectomy to repair the tear and dislocation to Plaintiff's right knee.

6 12. After her surgery, Plaintiff continued with follow-up appointments and Defendant
7 was provided progress reports on her condition. On September 13, 2013 a Functional Capacity
8 Evaluation (FCE) was ordered to determine the work level Plaintiff could perform based on the
9 permanent restrictions Levi was given by her doctor.

10 13. On October 30, 2013 Plaintiff received a letter outlining the FCE results/findings,
11 permanent work restrictions, re-employment options and vocational rehabilitation services. This
12 included that Levi was released to "medium level work" with specific restrictions to avoid
13 squatting, occasional walking, kneeling (w/support), crawling and climbing.

14 14. As of October 11, 2003 Plaintiff exhausted all her FML and she was put on leave
15 without pay status from October 12, 2013 through November 22, 2013.

16 15. On November 14, 2013 Levi received approval for an alternative job on a
17 permanent basis as an Administrative Assistant I in the Division of Child and Family Services and
18 started the position on November 25, 2013.

19 16. This was a clerical position which only required Plaintiff to sit at a desk.
20 Unfortunately her desk was located on the second floor of a building with no elevator. As part of
21 her duties she was required to carry documents, files, reams of papers and other items up and
22 down the stairs a minimum of six times a day, but on most days ten to twelve times.

23 17. Having to carry the various items up and down the stairs led to Plaintiff
24 experiencing severe pain and swelling in her right knee and required her to use a cane to help her
25 to ambulate throughout the work days. Levi's doctor approved the use of the cane to get around.

26 18. On December 27, 2013 it was determined by Defendant that it was not safe to
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1 allow Levi to use a cane to go up and down the stairs and her job as Administrative Assistant I
2 was terminated as of that date.

3 19. At no time did Defendant consider putting Levi's desk on the first floor and have
4 other employees carry the office supplies and other items up and down the stairs, which would
5 have accommodated her disabilities.

6 20. Thereafter on January 2, 2014 Plaintiff was put on leave without pay status and on
7 January 30, 2014 Levi was informed that she would not be provided additional leave without pay.

8 21. Finally on March 6, 2014 the State of Nevada recommended Plaintiff's
9 employment be separated and Levi's employment with Defendant was officially terminated
10 effective March 28, 2014.

11 22. During the time period from when she was terminated from the Administrative
12 Assistant I on December 27, 2013 to when her employment was terminated completely on March
13 28, 2014, Plaintiff requested an accommodation to another alternative position which she could
14 perform the essential functions of with her disabilities but was not given another alternative
15 position.
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17 23. Levi was willing to take an alternative job that accommodated her disability at any
18 department or division at the State of Nevada, not just the Department of Health & Human
19 Services or the Division of Child and Family Services.

20 **CAUSE OF ACTION**

21 **(For Disability Discrimination, Failure to Accommodate**
22 **and Retaliation in Violation of the ADA)**

23 24. Plaintiff Levi incorporates the allegations set forth in paragraphs 1 through 23,
24 inclusive, as if fully set forth herein.

25 25. As set forth hereinabove, on May 2, 2013 while performing a physical restraint in a
26 training class Plaintiff twisted her right knee and suffered a closed dislocation of the right patella
27 (a medial meniscus tear of her right knee) which substantially limited her in the major life
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1 activities of walking, squatting, kneeling, crawling, stooping, climbing, lifting and working,
2 among other major life activities, and thus qualified Levi as disabled under the ADA.

3 26. Further Levi was also a qualified individual with a disability because with or
4 without accommodations she could perform the essential function of the job she held or desired.

5 27. In particular she was able to perform the job of Administrative Assistant I which
6 she was approved for and started on November 25, 2013. This job accommodated her right knee
7 impairment because the position was a desk job which mostly required Plaintiff to sit at a desk.

8 28. Unfortunately the job also required Plaintiff to climb up and down stairs (a
9 minimum of six times a day, but on most days ten to twelve times), with office suppliers or other
10 items. Levi tried to accommodate for her right knee impairment by using a cane to ambulate up
11 and down the stairs (which was approved by her doctor), but Defendant would not allow this and
12 instead terminated her from this position on December 27, 2013.

13 29. Instead of terminating Levi from the position, the State of Nevada could have
14 accommodated Plaintiff's inability to walk up and down the stairs without use of a cane by
15 moving her desk from the second floor to the first floor and having a non-disabled employee carry
16 the office suppliers or other items up and down the stairs.

17 30. In addition, Defendant could have also accommodated Levi's disability by finding
18 her another permanent job which she could have performed the essentially functions of with her
19 disabilities. Plaintiff was willing to transfer to any department or division at the State of Nevada
20 in order to find a position which could accommodate her disabilities.

21 31. The State of Nevada could have also extended her non paid leave of absence
22 (which is a reasonable accommodation under the ADA), until they could have found Plaintiff an
23 alternative job which she could have performed with her disabilities.

24 32. Because Defendant failed to provide Levi with these or other accommodations
25 under the ADA and ultimately terminated Plaintiff because of her disability, they are liable to
26 Plaintiff for damages under the ADA.
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1 33. Further Plaintiff was retaliated against for requesting accommodations under the
2 ADA and for otherwise engaging in protected activity or otherwise pursuing her rights under the
3 ADA.

4 34. As a direct, foreseeable, and legal result of the Defendant's disability
5 discrimination, failure to accommodate Plaintiff's disability and retaliation, Plaintiff has suffered,
6 overall economic losses in earnings, bonuses, job benefits and expenses, in an amount to be
7 proven at trial which exceeds the minimum jurisdictional limits of this Court.

8 35. Defendant's retaliation was with deliberate indifference to Plaintiff's rights or was
9 willful, entitling Plaintiff to an award of liquidated damages equal to double the amount of her
10 actual damages.

11 36. As a further direct, foreseeable, and legal result of the Defendant's disability
12 discrimination, failure to accommodate and retaliation, Plaintiff has suffered indignity, mental
13 anguish, humiliation, emotional distress, nervousness, tension, anxiety, change in sleep patterns,
14 depression, inconvenience and loss of enjoyment of life and other pecuniary losses, the extent of
15 which is not fully known at this time, for which Plaintiff seeks damages in an amount in excess of
16 the minimum jurisdictional limits of the Court, also to be proven at the time of trial.

17 37. In acting as they did, Defendant knowingly, willfully, and intentionally acted in
18 conscious disregard of Plaintiff's rights. Their conduct was despicable, has subjected Plaintiff to
19 oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a
20 sum according to proof at trial.

21 38. Plaintiff claims the damages alleged herein, together with prejudgment interest as
22 provided by law, in a sum according to proof at trial.

23 39. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of
24 her claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to
25 proof at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff Levi demands judgment against Defendant as follows:

1. Declaring that the acts and practices complained of here are a violation of the ADA and retaliation;
2. Enjoining and permanently restraining the violations by Defendant of the ADA and for retaliation;
3. For back pay and front pay for overall economic losses in earnings, bonuses, job benefits and expenses, according to proof at time of trial;
4. For liquidated damages for retaliation as an additional amount equal to the sum of actual damages and interest;
5. For compensatory damages for mental and emotional distress, worry, indignity, mental anxiety, mortification, depression, shame, grief, inconvenience and loss of enjoyment of life and other pecuniary losses, all to Plaintiff's damage in a sum to be shown at the time of trial;
6. For punitive damages;
7. For attorney's fees and costs in an amount determined by the court to be reasonable;
8. For pre-judgment interest on all damages; and
9. For any other and further relief that the Court considers proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

DATED: 4/4/2016

LAW OFFICES OF MICHAEL P. BALABAN

BY: /s/ Michael P. Balaban
Michael P. Balaban
LAW OFFICES OF MICHAEL P. BALABAN
10726 Del Rudini Street
Las Vegas, NV 89141

EXHIBIT

A

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Ledenia Levi**
3618 Kolendo Ct.
Apt A
Las Vegas, NV 89103

From: **Las Vegas Local Office**
333 Las Vegas Blvd South
Suite-8112
Las Vegas, NV 89101



On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

487-2014-00413

Jonathan Munoz,
Investigator

(702) 388-5058

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission


Richard T. Burgamy,
Local Office Director

1/5/16
 (Date Mailed)

Enclosures(s)

cc:

Darren Squillante
Human Resources Officer
STATE OF NEVADA DEPT OF HEALTH & HUMAN
SERVICES
4126 Technology Way 3rd Floor
Carson City, NV 89700